

- A **Teoh Chu Thong v Anantha Kiruisan PSR
@ Anantha Krishnan & Anor**
- B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-04-197
OF 2004
GOPAL SRI RAM, SURIYADI AND HASAN LAH JJCA
5 DECEMBER 2007
- C *Civil Procedure — Appeal — Appeal to Federal Court — Civil appeal from
High Court's appellate jurisdiction — Whether Court of Appeal final arbiter —
Whether appeal competent to be brought before the Federal Court — Courts of
Judicature Act 1964 s 96*
- D *Civil Procedure — Appeal — Credibility of witnesses — Proper approach by
intermediate appellate court*
- E *Civil Procedure — Appeal — Interference by appellate court — Proper approach
in cases involving assessment of facts*
- F The plaintiff was involved in a road accident with the defendant. There were
two diametrically opposed versions as to how the accident occurred. The
sessions court preferred the plaintiff's version and found the defendant solely
to blame for the accident. The defendant appealed to the High Court which
reversed the decision of the sessions court and dismissed the plaintiff's claim.
- G Hence this appeal.

Held, allowing the appeal:

- H (1) In the instant case, the High Court had exercised its appellate and not
its original jurisdiction. On a reading of the plain words of s 96 of the
Courts of Judicature Act 1964, the Federal Court had no jurisdiction
over the instant case, although the respondent appeared to have moved
the Federal Court (see para 1).
- I (2) There was nothing improbable in the plaintiff's version as to how the
accident occurred and the sessions court judge was perfectly entitled to
prefer his version than the defendant's. This in no way flawed the
judgment of the sessions court (see para 3).

- (3) The judicial commissioner ('JC') did not appear to have appreciated the role of an appellate court in a case such as the instant. The ring of truth or falsity in the evidence of the witnesses who gave evidence before the sessions court would have been more audible to that court than to the JC who heard the intermediate appeal. Thus, the High Court had erred in interfering with the sessions court's findings (see para 6); *Clarke v Edinburgh Tramways Co* (1919) SC (HL) 35, followed and *Ryan v Jarvis* [2005] UKPC 27 referred.

Obiter:

In this type of cases— road accident cases— the Court of Appeal, generally, does not produce written reasons for its decision. This is because road accident cases merely turn on an assessment of facts and do not involve any novel or important principle of law. Secondly, because the Court of Appeal is the final arbiter and no further appeal lies to the Federal Court in matters that originate in a subordinate court.

[Bahasa Malaysia summary]

Plaintif terlibat dalam satu kemalangan jalan raya dengan defendan. Terdapat dua versi yang bertentangan sama sekali mengenai bagaimana kemalangan tersebut berlaku. Mahkamah sesyen memilih versi plaintif dan memutuskan bahawa hanya defendan yang harus dipersalahkan terhadap kemalangan tersebut. Defendan merayu ke Mahkamah Tinggi yang mengakas keputusan mahkamah sesyen tersebut dan menolak tuntutan plaintif. Maka rayuan ini.

Diputuskan, membenarkan rayuan:

- (1) Di dalam kes ini, Mahkamah Tinggi telah melaksanakan bidang kuasa rayuannya dan bukan bidang kuasa asalnya. Membaca kata-kata jelas s 96 Akta Mahkamah Kehakiman 1964, Mahkamah Persekutuan tidak mempunyai bidang kuasa dalam kes ini, walaupun responden cuba memohon ke Mahkamah Persekutuan (lihat perenggan 1).
- (2) Tiada apa-apa yang tidak munasabah di dalam versi plaintif mengenai bagaimana kemalangan tersebut berlaku dan hakim mahkamah sesyen berhak untuk memilih versinya berbanding versi defendan. Ini tidak, dalam apa cara sekalipun, menjadikan keputusan mahkamah sesyen salah (lihat perenggan 3).
- (3) Pesuruhjaya kehakiman (PK) jelas tidak menghargai peranan mahkamah rayuan di dalam kes seperti ini. Kebenaran atau kepalsuan keterangan saksi-saksi yang memberikan keterangan di mahkamah sesyen akan lebih jelas kepada mahkamah tersebut daripada PK yang mendengar rayuan perantara. Oleh itu, Mahkamah Tinggi telah

- A** terkhalaf dalam mencampurtangan dengan penemuan mahkamah sesyen (lihat perenggan 6); *Clarke v Edinburgh Tramways Co* (1919) SC (HL) 35 diikuti dan *Ryan v Jarvis* [2005] UKPC 27 dirujuk.

Obiter:

- B** Di dalam kes-kes yang sebegini – kes-kes kemalangan jalan raya – Mahkamah Rayuan, pada amnya, tidak memberikan alasan bertulis untuk keputusannya. Ini adalah kerana kemalangan jalan raya diputuskan semata-mata atas penilaian fakta dan tidak melibatkan prinsip undang-undang yang baru atau penting. Kedua, oleh kerana Mahkamah Rayuan adalah pemutus muktamad dan tidak ada rayuan lanjut ke Mahkamah Persekutuan bagi perkara yang bermula di mahkamah rendah.]
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Notes

- For cases on interference by Appellate Court, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1024–1065.
- D** For cases on appeal to Federal Court, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 749–756.
- For cases on credibility of witnesses, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 826–836.

- E** **Cases referred to**

Clarke v Edinburgh Tramways Co (1919) SC 35 (refd)
Ryan v Jarvis [2005] UKPC 27 (folld)

- F** **Legislation referred to**

Courts of Judicature Act 1964 s 96

- Appeal from: Civil Suit No R2–12–541 of 2000 (High Court, Kuala Lumpur).
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Nelson Cherian (Shariza Varegheese & Chandran) for the appellant.
M Ravendran (G Pereira & Associates) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

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- [1] This is a case of a road accident. The matter was tried by the sessions court which found for the plaintiff. It held the defendant to be solely to blame for the collision. The High Court reversed. It dismissed the plaintiff's claim. It did so on the ground that the sessions court had erred in its evaluation of the evidence. The plaintiff appealed to us. We allowed the appeal and restored the judgment of the sessions court. In cases of this sort we do not, as a general rule, produce written reasons for our decision. First, because these kinds of cases merely turn on an assessment of facts: they do not
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involve any novel or important principle of law. Second, because in matters that originate in a subordinate court, this court is the final arbiter and no further appeal lies to the Federal Court. That is provided for in s 96 of the Courts of Judicature Act 1964 which, inter alia, states that an appeal shall lie to the Federal Court from 'any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction'. Notice the words 'exercise of its original jurisdiction'. In the present instance, the High Court exercised its *appellate* and not its *original* jurisdiction. As such, on a reading of the plain words of the statute, the Federal Court has no jurisdiction over this case. Yet, the respondent before us appears to have moved that court.

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[2] The main issue in this appeal is whether the High Court was correct in interfering with the sessions court's finding of pure fact based on evidential credibility. The plaintiff's case at first instance was that he was riding his motorcycle along Jalan Loke Yew. He was headed in the direction of Cheras. The defendant who was a taxi driver overtook the plaintiff and obstructed his path. Because of the suddenness of the defendant's movement of his vehicle, the plaintiff ran into the rear of the taxi and was injured. The defendant's version was that he was proceeding along Jalan Loke Yew when the plaintiff suddenly collided into the rear of the former's taxi. There were then two diametrically opposed versions presented to the sessions court. The sessions court preferred the plaintiff's version and found the defendant solely to blame for the collision. In doing so, the sessions court thought it likely that the defendant's taxi must have suddenly pulled up to pick up a passenger from the kerb and that must have accounted for the way in which the vehicle was driven. The judicial commissioner who reversed the sessions court took the view that as there was no evidence suggesting that there had been any person on the kerb reversed the sessions judge.

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[3] Now, there was nothing improbable in the plaintiff's story when he said that the defendant taxi had overtaken him and obstructed his path. You will see that sort of thing happening everyday in Kuala Lumpur. It is a common occurrence in Kuala Lumpur for a taxi to suddenly pull up to the kerb for the purpose of either picking up a passenger or dropping one off. So the sessions court was clearly entitled to suggest that as a probable cause for the way in which the defendant's taxi behaved. This in no way flawed its judgment.

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[4] The judicial commissioner does appear to have appreciated the role of an appellate court in a case such as this. That role was set out by *Clarke v Edinburgh Tramways Co* per Lord Shaw Dunfermline in (1919) SC (HL) 35, at p 36, where he said:

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A When a judge hears and sees witnesses and makes a conclusion or inference with regard to what on balance is the weight of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the judge makes any observations with regard to credibility or not. I can of course quite understand a Court of Appeal that says that it will not interfere in a case in which the judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case things are much more evenly divided; witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion, the duty of an appellate court in those circumstances is for each judge of it to put to himself, as I now do in this case, the question, Am I — who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case — in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.

E [5] More recently, *Ryan v Jarvis* [2005] UKPC 27, an appeal from Antigua & Barbuda Lord Hoffmann stated the appellate practice in this way:

F It is of course most unusual for an appellate tribunal to reverse a trial judge's findings on credibility on the ground that the evidence which he rejected has the ring of truth. The true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record.

G [6] So too here. The ring of truth or falsity in the evidence of the witnesses who gave evidence before the sessions court would have been more audible to that court than to the judicial commissioner who heard the intermediate appeal. Having concluded that the High Court had erred in interfering with the sessions court's findings, this court had no alternative but to allow the appeal and to restore the judgment entered at trial. Other consequential orders that usually follow a successful appeal were made.

H [7] My learned brothers Suriyadi and Hasan Lah JJCA have seen this judgment in draft and have expressed their agreement with it.
Appeal allowed.

I Reported by Andrew Christopher Simon
